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*Attorneys for Plaintiff Nevada Restaurant Services, Inc.*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

NEVADA RESTAURANT SERVICES,  
INC., DBA DOTTY'S, a Nevada corporation,

Plaintiff,

vs.

FACTORY MUTUAL INSURANCE  
COMPANY, dba FM GLOBAL, a Rhode  
Island corporation; AFFILIATED FM  
INSURANCE COMPANY; a Rhode Island  
Corporation; JEFFREY ZEBARTH, an  
individual; PATRICK LANGIN, an  
individual; DOES I through X; and ROE  
Business Entities I through X,

Defendants.

Case No.: 2:22-cv-01104-RFB-VCF

**STIPULATION AND ORDER TO  
DISMISS DEFENDANT FACTORY  
MUTUAL INSURANCE COMPANY  
WITHOUT PREJUDICE**

Pursuant to Local Rule 7-1, Plaintiff Nevada Restaurant Services, Inc. ("Plaintiff"), and Defendants Factory Mutual Insurance Company ("Factory Mutual"), Affiliated FM Insurance Company ("Affiliated FM"), Jeffrey Zebarth ("Zebarth") and Patrick Langin ("Langin")

(collectively referred to herein as “Defendants”), by and through their counsel of record, hereby request that the Court dismiss Defendant Factory Mutual from this action, without prejudice. The parties stipulate and agree as follows:

1. On May 31, 2022, Plaintiff filed a complaint in the Eighth Judicial District Court, Clark County, Nevada, for breach of contract, contractual breach of implied covenant of good faith and fair dealing, and tortious breach of implied covenant of good faith and fair dealing against Factory Mutual and Affiliated FM. Plaintiff also alleged negligent misrepresentation against Defendants Zebarth and Langin. ECF No. 1-1.

2. On July 11, 2022, Defendants Affiliated FM and Factory Mutual filed a petition for removal of the matter from the Eighth Judicial District Court, Clark County, Nevada, to the United States District Court for the District of Nevada. ECF No. 1.

3. On July 18, 2022, Defendant Factory Mutual filed a motion to dismiss Plaintiff’s causes of action for breach of contract, contractual breach of implied covenant of good faith and fair dealing and tortious breach of implied covenant of good faith and fair dealing. ECF No. 8. Additionally, Defendants Langin and Zebarth filed motions to dismiss Plaintiff’s cause of action for negligent misrepresentation. ECF Nos. 9-10.

4. The original deadline to file Plaintiff’s Oppositions to Defendants’ Motions to Dismiss was August 1, 2022.

5. The deadline to file Plaintiff’s Oppositions to Defendants’ Motions to Dismiss was continued to August 15, 2022, per the agreement of the parties and the Order of this Court. *See* ECF No. 20.

6. The deadline to file Plaintiff’s Opposition to Defendant Factory Mutual’s Motion to Dismiss was continued to August 19, 2022, per the agreement of the parties and the Order of this Court, as Plaintiff and Defendant Factory Mutual continued to diligently work together to reach an agreement regarding the dismissal of Defendant Factory Mutual as a party in this matter. ECF No. 28.

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7. Based on the foregoing, and in an effort to preserve judicial resources, the parties hereby agree to the dismissal of Defendant Factory Mutual according to the following terms:

- a. Defendant Factory Mutual will be dismissed without prejudice;
- b. Plaintiff may add Factory Mutual as a defendant in this matter if it later discovers reasons and/or facts to re-allege Factory Mutual has legal and/or contractual liability;
- c. If added back as a defendant in this matter, Defendant Factory Mutual will not assert any defenses regarding timeliness, including but not limited to the statute of limitations, but may assert defenses set forth in its pending Motion to Dismiss (ECF No. No. 8) or that were available at the time Defendant Factory Mutual filed its Motion to Dismiss (ECF No. 8); and
- d. If added back as a Defendant in this matter, Defendant Factory Mutual will retain its rights to file and/or re-file a Motion to Dismiss and Plaintiff will not challenge the timeliness of the Motion.

DATED: August 19, 2022

/s/ Madison S. Florance

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*Attorneys for Plaintiff Nevada Restaurant Services, Inc.*

IT IS SO ORDERED:

  
\_\_\_\_\_  
RICHARD F. BOULWARE, II  
UNITED STATES DISTRICT JUDGE

DATED this 22nd day of August, 2022.

1 DATED: August 19, 2022

2 /s/Christina M. Lincoln  
3 Howard J. Russell, Esq. (Bar # 8879)  
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14 *Attorneys for Defendants*

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16 IT IS SO ORDERED:

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18 UNITED STATES DISTRICT JUDGE

19 DATED: \_\_\_\_\_  
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